CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

Bureau of Customs and Border Protection

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 38 **FEBRUARY 25, 2004** **NO. 9**

This issue contains:

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the Bureau of Customs and Border Protection, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

Please visit the U.S. Customs Web at:
http://www.cbp.gov

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

Bureau of Customs and Border Protection

CBP Decision

(CBP Decision 04–07)

RECORDATION OF TRADE NAME: "DISPALCA"

AGENCY: Customs and Border Protection (CBP).

ACTION: Notice of final action.

SUMMARY: This document gives notice that "DISPALCA" has been recorded with CBP as a trade name by Caribbean Imports, Inc., a Florida corporation organized under the laws of the State of Florida, P.O. Box 617308, Orlando, Florida 32861–7308.

The application for trade name recordation was properly submitted to CBP and published in the Federal Register. As no public comments in opposition to the recordation of this trade name were received by CBP within the 60-day comment period, the trade name has been duly recorded with CBP and will remain in force as long as this trade name is in use by this manufacturer in accordance with § 133.15 of the CBP Regulations.

EFFECTIVE DATE: February 10, 2004.

FOR FURTHER INFORMATION CONTACT: La Verne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229; (202) 572–8710.

SUPPLEMENTARY INFORMATION:

Trade names that are being used by manufacturers or traders may be recorded with Customs and Border Protection (CBP) to afford the particular business entity with increased commercial protection. CBP procedures for recording trade names are provided at § 133.11 et seq. of the CBP Regulations (19 CFR 133.11 et seq.). Pursuant to these regulatory procedures, Caribbean Imports, Inc., a Florida corporation organized under the laws of the State of Florida, P.O. Box 617308, Orlando, Florida 32861–7308, applied to CBP for protection of its manufacturer's trade name, "DISPALCA".

On Wednesday, November 19, 2003, CBP published a notice of application for the recordation of the trade name "DISPALCA" in the **Federal Register** (68 FR 65304). The notice advised that before final action would be taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing in opposition of the recordation of this trade name. The closing day for the comment period was January 20, 2004.

As of the end of the comment period, January 20, 2004, no comments were received. Accordingly, as provided by § 133.14 of the CBP Regulations, "DISPALCA" is recorded with CBP as the trade name used by the manufacturer, Dispalca, and will remain in force as long as this trade name is in use by this manufacturer in accordance with § 133.15 of the CBP Regulations.

Dated: February 3, 2004

PAUL PIZZECK,
Acting Chief,
Intellectual Property Rights Branch.

[Published in the Federal Register, February 10, 2004 (69 FR 6319)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, February 11, 2004,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

Myles B. Harmon for SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

General Notices

19 CFR PART 177

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF GLASS-BEADED ARTIFICIAL FOLIAGE

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of three ruling letters, modification of one ruling letter, and revocation of treatment relating to tariff classification of glass-beaded artificial foliage.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke three ruling letters and modify one ruling letter pertaining to the tariff classification of glass-beaded artificial foliage under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before March 26, 2004.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylva-

nia Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Neil S. Helfand, General Classification Branch, (202) 572–8791.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke three ruling letters and modify one ruling letter, all of which pertain to the classification of glass-beaded artificial foliage. Although in this notice Customs is specifically referring to four rulings, NY G89195, I81590, I82557 and I82558, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any

treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY G89195, NY I81590, NY I82557 and NY I82558, dated April 25, 2001, May 31, 2002, June 19, 2002 and June 13, 2002, respectively, set forth as Attachments A to D, respectively, to this document, Customs classified glass-beaded artificial foliage in subheading 6702.10.20, HTSUS, as: "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods."

It is now Customs position that the glass-beaded artificial foliage is classified in subheading 7018.90.50, HTSUS, as "[g]lass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther." Proposed HQ 966663 modifying NY G89195, proposed HQ 966664 revoking NY I81590 and proposed HQ 966665 revoking NY I82557 and NY I82558 are set forth as Attachments E, F, and G, respectively.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY G89195 and revoke NY I81590, NY I82557 and NY I82558 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analyses set forth in proposed HQ 966663, HQ 966664 and HQ 966665. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: February 4, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY G89195
April 25, 2001
CLA–2–67:RR:NC:2:222 G89195
CATEGORY: Classification
TARIFF NO.: 6702.10.2000

MS. JULIE SCOGGAN
EVANS AND WOOD AND COMPANY, INC.
612 East Dallas Road, Suite 200
Grapevine, TX 76051

RE: The tariff classification of artificial foliage, fruit, and berries from China.

DEAR MS. SCOGGAN:

In your letter, dated April 5, 2001, you requested a classification ruling on behalf of your client, Hobby Lobby, Oklahoma City, OK.

The merchandise is comprised of artificial foliage, fruit, and berries on picks. It is described thus:

1. Item CP124 consists of 31 styrofoam grapes covered with silver glitter and two, silver colored leaves on a pick. The article is 60 percent polyfoam, 13 percent iron wire, and 10 percent polyester. The essential character is imparted by the styrofoam grapes that are covered with glitter.
2. Item CP132 consists of plastic grapes covered with tiny, glass beads and green, plastic leaves on a plastic vine. The tiny, glass beads impart a glittered look to the plastic grapes. The article is 37 percent glass beads, 34 percent polyvinyl chloride (PVC) paste, 26 percent DOP oil, and 3 percent other materials. The essential character is conveyed by the plastic grapes.
3. Item CP137 consists of 32 acrylic grapes and two, green, textile leaves on a wire. The item is 82 percent acrylic beads, 10 percent velvet, and 8 percent iron wire. The essential character is imparted by the acrylic beads.
4. Item CP310, called "Flecked Glitter Pear Pick," is a green, plastic pear on a plastic pick. The item is 80 percent plastic, 10 percent polyester, 5 percent iron wire, and 5 percent natural materials.
5. Item CP324—"Diamond Pear Pick, Polyfoam Beaded Apple on 7 Inch Pick" is a styrofoam pear on a plastic coated, wire pick. The pear is painted gold and it has a textured surface. It is 90 percent polyfoam, 8 percent iron wire, and 2 percent other plastic.

The applicable subheading for artificial foliage, fruit, and berries (items CP124, CP132, CP137, CP310, and CP324) will be 6702.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit, of plastics, assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods. The rate of duty will be 8.4 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Masterson at 212–637–7090.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I81590
May 31, 2002
CLA–2–67:RR:NC:SP:222 I81590
CATEGORY: Classification
TARIFF NO.: 6702.10.2000; 9505.10.2500; 7013.99.50; 6702.90.3500

MS. LINDA C. PEARSON
SEASONAL SPECIALTIES
11455 Valley View Road
Eden Prairie, MN 55344

RE: The tariff classification of artificial foliage, artificial flowers, Christmas stockings and a glass stake from China.

DEAR MS. PEARSON:

In your letter dated May 8, 2002, you requested a classification ruling.

You have submitted four samples and photos depicting the fifth sample, Christmas stockings. Style number T60071 identifies a Beaded Berry Wreath. This product is composed of 3% polyester, 54% iron wire, 18% gypsum, 22% glass beads, 1% leaf and 2% glue. The gypsum berries are made of styrofoam and covered with glass beads. The leaves are made of man-made fiber woven fabric. The berries and leaves are glued to wire stems that have been wrapped with paper. The wires are attached to a metal base that has been wrapped with paper. In our opinion, the plastic berries impart the essential character to this item.

Style number T60072 is a Beaded Berry/Heart Wreath. This wreath is designed with gypsum berries made of styrofoam and tiny hearts made of hard plastic. The berries and hearts are covered with glass beads. The leaves are composed of man-made fiber woven fabric. The berries, hearts and leaves are glued to the wire stems and attached to a metal base that has been wrapped with paper. The plastic berries and hearts impart the essential character to this item.

Assortment number T59997 identifies the Mitten Shape Christmas Stockings. The stockings are 18 inches in length with a loop for hanging. The six styles include three with snowmen and three with Santa. Your letter of inquiry states that the mittens are intended for use the same as Christmas

stockings. They are large enough to hold small gifts. The mitten Christmas stockings are composed of 80% felt and 20% polyester fleece.

Style number T60073 is a stained glass plant stake. The stake is 11″ high with a 2.5″ x 3″ stained glass heart and an 8.5″ metal post. This item can be used in a bouquet of flowers or it can be placed in the soil of a potted plant.

Style number T60078 is an 18″ Heart Shaped Wreath. The wreath is designed with artificial roses made of man-made fiber woven fabric. This wreath can be hung on a wall or door as decoration in the home.

The samples are returned as you requested.

The applicable subheading for style numbers T60071, Beaded Berry Wreath and T60072, Beaded Berry/Heart Wreath will be 6702.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of plastics: assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods. The rate of duty will be 8.4 percent ad valorem.

The applicable subheading for style number T59997, Mitten Shape Christmas Stockings will be 9505.10.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other. The rate of duty will be free.

The applicable subheading for style number T60073, the stained glass plant stake, will be 7013.99.50, Harmonized Tariff Schedule of the United States (HTS), which provides for glassware of a kind used for . . . indoor decoration or similar purposes . . . other glassware: other: other: other: valued over thirty cents but not over three dollars each. The duty rate will be 30 percent ad valorem.

The applicable subheading for style number T60078, Artificial Heart Shaped Wreath, will be 6702.90.3500, Harmonized Tariff Schedule of the United States (HTS), which provides for artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Other: of man-made fibers. The rate of duty will be 9 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646–733–3026.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I82557
June 19, 2002
CLA–2–67:RR:NC:2:222 I82557
CATEGORY: Classification
TARIFF NO.: 6702.10.2000

BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036–8901

RE: The tariff classification of a "Jeweled Fruit Potpourri", item # PP239211, from China.

DEAR MS. WIERBICKI:

In your letter dated May 28, 2002, you requested a tariff classification ruling, on behalf of Avon Products, Inc, your client.

You are requesting the tariff classification on an item that is identified as item # PP239211, a collection of scented, artificial fruits and nuts. The fruits consist of apples, peaches, grapes, strawberries, cranberries, oranges and pears. The fruits are constructed from styrofoam, painted the appropriate color for the representative fruit and covered with tiny, glass beads. Some of the fruit incorporates polyester leaves and a stem of plastic or wire. The artificial nuts are wooden and painted various colors, such as gold, dark magenta or purple. The product will be classified in Chapter 67 of the HTSUSA as artificial fruit of plastic. The sample will be returned, as requested.

The applicable subheading for the "Jeweled Fruit Potpourri", item # PP239211, will be 6702.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of plastics: Assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." The rate of duty will be 8.4% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646–733–3026.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I82558
June 13, 2002
CLA–2–67:RR:NC:2:222 I82558
CATEGORY: Classification
TARIFF NO.: 6702.10.2000

BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036–8901

RE: The tariff classification of a decorative "kissing ball", item PP239215, from China.

DEAR MS WIERBICKI:

In your letter dated May 28, 2002, you requested a tariff classification ruling, on behalf of Avon Products, Inc., your client.

You are requesting the tariff classification on an article known as a "kissing ball", item PP239215, measuring approximately 4 inches in diameter and made of artificial fruits. The fruits are constructed from styrofoam and covered with tiny, glass beads. The fruits are set into a larger styrofoam ball, by means of metal stems, which also incorporates green leaves made from polyester material and a burgundy colored ribbon for hanging the kissing ball. The "kissing ball" will be classified in Chapter 67 of the HTSUSA as artificial plastic fruit, assembled by binding with flexible materials such as wire . . . or by gluing or by similar methods. The sample will be returned, as requested.

The applicable subheading for the "kissing ball" item PP239215, will be 6702.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers foliage or fruit: Of plastics: Assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar method." The rate of duty will be 8.4% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646–733–3026.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966663
CLA–2 RR:CR:GC 966663 NSH
CATEGORY: Classification
TARIFF NO.: 7018.90.50

MS. JULIE SCOGGAN
EVANS AND WOOD AND COMPANY, INC.
612 East Dallas Road, Suite 200
Grapevine, Texas 76051

RE: NY G89195 modified; Articles of glass beads

DEAR MS. SCOGGAN:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York Ruling letter (NY) G89195, dated April 25, 2001, on behalf of your client, Hobby Lobby. We have reviewed the classification of item CP132 in NY G89195 and have determined that it is incorrect. This ruling sets forth the correct classification.

FACTS:

The item at issue, CP132, was previously classified in NY G89195 under subheading 6702.10.20, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." In researching similar issues, Customs concluded that its classification was incorrect and that this item should be classified under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and similar glass smallwares and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

Item CP132 consists of plastic grapes covered with glass beads and green, plastic leaves. These glass-beaded grapes are interspersed along a plastic vine. The glass beads impart a wet or sparkling look to the item. By percentage, the item is 37 percent glass beads, 34 percent polyvinyl chloride (PVC) paste, 26 percent DOP oil, and 3 percent other materials.

ISSUE:

Whether the glass-beaded artificial foliage is classified as artificial foliage or as an article of glass beads.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) to the HTSUS constitute the official interpretation of the Har-

monized System at the international level. Although not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:
6702 .10	Of plastics:
6702.10.20	Assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods
* * * * *	
7018	Glass beads, imitation pearls, imitation precious or semiprecious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lampworked glass, other than imitation jewelry; glass microspheres not exceeding 1 mm in diameter:
7018.90	Other:
7018.90.50	Other

Artificial fruit is generally classified under heading 6702, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." Although the item in question contains some of the materials described in heading 6702, HTSUS, and by its shape resembles artificial fruit, it is covered with glass beads. In contrast, articles of glass beads are listed under heading 7018, HTSUS.

Item CP132 is described as consisting of plastic grapes with plastic leaves that are attached to a plastic vine; the grapes are covered with glass beads. The item is to be hung as an ornament or display piece, not intended for use on a specific occasion. The glass beads impart to the item a wet or sparkling look which substantially enhances the visual appeal of the grapes and their merchantability. Furthermore, located exclusively on the surface of the item, and virtually covering it in its entirety, the glass beads effectively hide from view most all of the other materials used in its construction. The glass beads also represent 37 percent of the item's materials, thereby constituting the most prevalent material used in its construction.

Note 3(a) to chapter 67 states that heading 6702 does not cover articles of glass and directs that such an article be classified in chapter 70. Because this item is substantially covered with glass beads on its surface that effectively hide from view any of the other materials used in its construction, and because by percentage the glass beads are the most prevalent material used in its construction, it is an article of glass. Therefore, it is precluded from classification under heading 6702, HTSUS, by reference to the chapter note. Instead, classification will be under chapter 70.

The ENs to heading 7018, HTSUS, provides, in pertinent part:

This heading covers a range of widely diversified glass articles, most of which are used, directly or after further processing, for ornamental and decorative purposes.

These include:

. . .

(E) **Various glass articles (other than imitation jewellery)**, obtained by assembling certain of the individual articles mentioned above, such as flowers, foliage and pearl ornaments for wreaths; fringes made of beads or bulges and intended for lampshades, shelves, etc.; blinds and portieres made of glass beads or bugles, and table mats made similarly; rosaries made of glass beads or imitation precious or semi-precious stones.

In view of the foregoing, item CP132 is classified under subheading 7018.90.50 as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

HOLDING:

Pursuant to GRI 1, the classification for item CP132 is under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

EFFECT ON OTHER RULINGS:

NY G89195 is MODIFIED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966664
CLA–2 RR:CR:GC 966664 NSH
CATEGORY: Classification
TARIFF NO.: 7018.90.50

MS. LINDA C. PEARSON
SEASONAL SPECIALTIES
11455 Valley View Road
Eden Prairie, Minnesota 55344

RE: NY I81590 revoked; Articles of glass beads

DEAR MS. PEARSON:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York Ruling letter (NY) I81590, dated May 31, 2002.

We have reviewed the classifications in NY I81590 and have determined that they are incorrect. This ruling sets forth the correct classifications.

FACTS:

The items at issue, T60071 and T60072, were previously classified in NY I81590. Customs classified the items under subheading 6702.10.20, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." In researching similar issues, Customs concluded that its classification was incorrect and that these items should be classified under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and similar glass smallwares and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

Item T60071 is identified as a Beaded Berry Wreath. It is composed of 3 percent polyester, 54 percent iron wire, 18 percent gypsum, 22 percent glass beads, 1 percent gold leaf and 2 percent glue. The gypsum berries are made of styrofoam and are completely covered with glass beads. The glass beads impart a wet or sparkling look to the item. The wire stems have been wrapped with paper and are attached to a metal base that also has been wrapped with paper.

Item T60072 is identified as a Beaded Berry/Heart Wreath. It is composed of 3 percent polyester, 54 percent iron wire, 18 percent gypsum, 22 percent glass beads, 1 percent gold leaf and 2 percent glue. The gypsum berries are made of styrofoam and the tiny hearts made of hard plastic. The berries and hearts are completely covered with glass beads. The glass beads impart a wet or sparkling look to the item. The wire stems have been wrapped with paper and are attached to a metal base that also has been wrapped with paper.

ISSUE:

Whether the glass-beaded artificial foliage is classified as artificial foliage or as an article of glass beads.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) to the HTSUS constitute the official interpretation of the Harmonized System at the international level. Although not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:
6703 .10	Of plastics:

6703.10.20	Assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods

* * * * *

7018	Glass beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewelry; glass micro-spheres not exceeding 1 mm in diameter:
7018.90	Other:
7018.90.50	Other

Artificial fruit is generally classified under heading 6702, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." Although the two items in question contains some of the materials described in heading 6702, HTSUS, and by its shape resembles artificial fruit, it is covered with glass beads. In contrast, articles of glass beads are listed under heading 7018, HTSUS.

The two articles at issue are described as a wreath of artificial berries, one with hearts, both of which having berries completely covered with glass beads. The items are intended to serve as an ornament to be hung on a door or appropriate display area, not anticipated for use on a specific occasion. The glass beads impart to both items a wet or sparkling look which substantially enhances the visual appeal of the berries and their merchantability. Furthermore, located exclusively on the surface of the item, and virtually covering it in its entirety, the glass beads effectively hide from view most all of the other materials used in the item's construction. The glass beads also comprise 22 percent of the item's materials, thereby representing the most prevalent material by percentage that is visible to the naked eye.

Note 3(a) to chapter 67 states that heading 6702 does not cover articles of glass and directs that such an article be classified in chapter 70. Because this item is substantially covered with glass beads on its surface that effectively hide from view most of the other materials used in its construction, and because by percentage the glass beads are the most prevalent material visible to the naked eye, it is an article of glass. Therefore, it is precluded from classification under heading 6702, HTSUS, by reference to the chapter note. Instead, classification will be under chapter 70.

The ENs to heading 7018, HTSUS, provides, in pertinent part:

> This heading covers a range of widely diversified glass articles, most of which are used, directly or after further processing, for ornamental and decorative purposes.
>
> These include:
>
> . . .
>
> (E) **Various glass articles (other than imitation jewellery)**, obtained by assembling certain of the individual articles mentioned above,

such as flowers, foliage and pearl ornaments for wreaths; fringes made of beads or bulges and intended for lampshades, shelves, etc.; blinds and portieres made of glass beads or bugles, and table mats made similarly; rosaries made of glass beads or imitation precious or semi-precious stones.

In view of the foregoing, items T60071 and T60072 are classified under subheading 7018.90.50 as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

HOLDING:

Pursuant to GRI 1, the classification for items T60071 and T60072 is under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

EFFECT ON OTHER RULINGS:

NY I81590 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966665
CLA–2 RR:CR:GC 966665 NSH
CATEGORY: Classification
TARIFF NO.: 7018.90.50

MS. BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, New York 10036–8901

RE: NY I82557 and NY I82558 revoked; Articles of glass beads

DEAR MS. WIERBICKI:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York Ruling letters (NY) I82557 and I82558, dated June 19, 2002 and June 13, 2002, respectively, on behalf of Avon Products, Inc. We have reviewed the classifications and have determined that they are incorrect. This ruling sets forth the correct classifications.

FACTS:

The two articles at issue were previously classified in NY I82557 and NY I82558. Customs classified both items under subheading 6702.10.20, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." In researching similar issues, Customs

concluded that its classification was incorrect and that these items should be classified under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and similar glass smallwares and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

In NY I82557, Customs classified item PP239211. The item, identified as a "Jeweled Fruit Potpourri," resembles a collection of scented artificial fruit and nuts. The varieties of fruit represented are apples, peaches, grapes, strawberries, cranberries, oranges and pears. The fruit is constructed from styrofoam, painted the appropriate color for the representative fruit and covered with glass beads. These glass beads impart a wet or sparkling look to the item. Some of the fruit incorporates polyester leaves and a stem of plastic or wire. The artificial nuts are wooden and painted various colors.

In NY I82558, Customs classified item PP239215. The item, identified as a "kissing ball," measures approximately 4 inches in diameter and resembles artificial fruit. It is constructed from styrofoam and covered with glass beads. These glass beads impart a wet or sparkling look to the item. The segments of the item made to resemble artificial fruit are set into a larger styrofoam ball by means of metal stems, which also incorporates green leaves made from polyester and a burgundy colored ribbon for hanging the item. By total weight of the item, the ribbon is 5 percent, the PVC leaf is 5 percent, the glass beads are 60 percent, the polyfoam fruit is 20 percent and the acetate box is 10 percent.

ISSUE:

Whether the glass-beaded artificial fruit is classified as artificial foliage or as an article of glass beads.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) to the HTSUS constitute the official interpretation of the Harmonized System at the international level. Although neither legally binding or dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:
6704 .10	Of plastics:
6704.10.20	Assembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods

* * * * *

7018	Glass beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallwares and articles thereof other than imitation jewelry; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewelry; glass micro-spheres not exceeding 1 mm in diameter:
7018.90	Other:
7018.90.50	Other

Artificial fruit is generally classified under heading 6702, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f plastics: [a]ssembled by binding with flexible materials such as wire, paper, textile materials, or foil, or by gluing or by similar methods." Although the two items in question contain some of the materials described in heading 6702, HTSUS, and by their shape resemble artificial fruit, they are covered with glass beads. In contrast, articles of glass beads are listed under heading 7018, HTSUS.

The two articles at issue are described as artificial fruit that is covered with glass beads, the exception being the polyester leaves. The items are intended to be hanging ornaments or display pieces, not intended for use on a specific occasion. The glass beads impart to the items a wet or sparkling look which substantially enhances the visual appeal of the fruit and their merchantability. Furthermore, located exclusively on the surface of the items, and virtually covering them in their entirety, the glass beads effectively hide from view most all of the other materials used in their construction. On item PP239215, the glass beads constitute 60 percent of the total weight and are therefore the heaviest material used in its construction.

Note 3(a) to chapter 67 states that heading 6702 does not cover articles of glass and directs that such an article be classified in chapter 70. Because these items are substantially covered with glass beads on their surface that effectively hide from view most all of the other materials used in their construction, and because by weight the glass beads on item PP239215 are the most prevalent material used in its construction, these are articles of glass. Although information on percentages is not available for item PP239211, it is exceedingly similar to item PP239215. Therefore, both items are precluded from classification under heading 6702, HTSUS, by reference to the chapter note. Instead, classification will be under chapter 70.

The ENs to heading 7018, HTSUS, provides, in pertinent part:

> This heading covers a range of widely diversified glass articles, most of which are used, directly or after further processing, for ornamental and decorative purposes.
>
> These include:
>
> . . .
>
> (E) **Various glass articles (other than imitation jewellery)**, obtained by assembling certain of the individual articles mentioned above, such as flowers, foliage and pearl ornaments for wreaths; fringes made of beads or bulges and intended for lampshades, shelves, etc.; blinds and portieres made of glass beads or bugles, and table mats made similarly;

rosaries made of glass beads or imitation precious or semi-precious stones.

In view of the foregoing, items PP239211 and PP239215 are classified under subheading 7018.90.50 as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

HOLDING:

Pursuant to GRI 1, the classification for items PP239211 and PP239215 is under subheading 7018.90.50, HTSUS, as "[g]lass beads . . . and articles thereof other than imitation jewelry; . . . glass microspheres not exceeding 1 mm in diameter: [o]ther: [o]ther."

EFFECT ON OTHER RULINGS:

NY I82557 and NY I82558 are REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION OF RULING LETTER RELATING TO THE PLACE OF FILING A PROTEST

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of ruling relating to the place of filing a protest.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 USC § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking HRL 963372 (March 22, 2000) which holds that a protest was not timely filed when the protest was filed within 90 days from liquidation at the port through which the goods were entered, but not liquidated because the port of entry lacked authority to liquidate entries. Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. Notice of the proposed action was published on December 24, 2003, in Volume 37, Number 52, of the CUSTOMS BULLETIN. Customs received no comments in response to that notice.

DATE: This action is effective April 25, 2004.

FOR FURTHER INFORMATION CONTACT: Renee D. Chovanec, Duty and Refund Determination Branch: (202) 572–8795.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI this notice advises interested parties that CBP hereby revokes HRL 963372, (March 22, 2000), which held that a protest was not timely filed when the protest was filed within 90 days of liquidation of the protested entry at the port through which the goods were entered but not liquidated because the port of entry lacked authority to liquidate entries.

ISSUE INVOLVED: The circumstances in HRL 963372 were that an entry was made at a port but was not liquidated at that port. The protestant entered goods at the Customs port of entry in Battle Creek, Michigan. This entry was liquidated by the Port Director at the Customs service port in Detroit, Michigan. Subsequently, the Protestant protested the classification of these goods by filing a protest at the Battle Creek port within 90 days of liquidation. The protest was then forwarded to Detroit where it did not arrive until more than 90 days from liquidation of the entry had elapsed. This protest was denied by the Port Director, Detroit, on the ground that it was not timely filed. The Port Director's denial was affirmed by HRL 963372.

The facts surrounding the protest at issue in HRL 963372 are distinguishable from the facts in the precedent cases described in HRL 963372. Most notable, there is a Customs-created connection between the ports of Battle Creek and Detroit. This connection is ab-

sent from the ports involved in those cases cited. Further, there is insufficient notice to the importing public that entries of merchandise entered at Battle Creek are liquidated at the discretion of the Detroit Port Director. Consequently, an importer making entry through the port of entry at Battle Creek, when protesting the liquidation of such an entry, could be unaware that the Port Director whose decision is being protested per 19 C.F.R. § 174.12(d) is that of the Detroit Port Director. Therefore, the protest filed within 90 days of liquidation at the Battle Creek port of entry where the protested entry was filed, though liquidated at the service port of Detroit was timely, and HRL 963372 is hereby revoked. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by CBP to substantially identical circumstances.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: February 5, 2004

William G. Rosoff for MYLES HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
PRO–2–01 RR:CR:DR
HQ 230095
February 5, 2004
CATEGORY: PROTEST

ROBERT C. MILLER
MANAGER, CONSULTING & TECHNICAL SERVICES
CORTEZ CUSTOMHOUSE BROKERAGE COMPANY
4950 West Dickman Road
Battle Creek, MI 49015

RE: Revocation of HQ 963372, issued March 22, 2000

DEAR MR. MILLER:

This is in regard to HRL 963372, issued March 22, 2000, to you on behalf of your client Bermo Enterprises. Per the requirements of 19 U.S.C. § 1625(c), this is to inform you of Customs revocation of HRL 963372 which held that protest number 3801–97–105194, filed by Bermo Enterprises, was "not timely filed at the proper Customs office." We have reconsidered HRL 963372 and determined that that decision is incorrect. This ruling sets forth the correct decision. However, per 19 C.F.R. § 177.12(e)(2) this ruling has no effect on the entry which was the subject of protest number 3801–97–105194.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on December 24, 2003, in Volume 37, Number 52, of the CUSTOMS BULLETIN. Customs received no comments in response to that notice.

FACTS:

In HRL 963372, the Protestant, Bermo Enterprises, ("Bermo"), entered goods at the Customs port of entry in Battle Creek, Michigan, port code 3805, on October 2, 1996. According to HRL 963372 "because Customs officials at the port of Battle Creek [did] not have the authority to either classify merchandise or liquidate entries, the entry was liquidated September 26, 1997, by the Port Director" at the Customs service port in Detroit, Michigan, port code 3801. Subsequently, Bermo protested the classification of these goods by filing a protest at the Battle Creek port on December 24, 1997.

According to HRL 963372, "the protest was forwarded to Customs officials in Detroit where it did not arrive until December 30, 1997." This protest was denied on April 16, 1999, by the Port Director, Detroit, because it was not timely filed. In response to Bermo's request to set aside the Port Director's denial, this office affirmed that Port Director's denial of the protest and denial of the Application for Further Review because the protest "was not timely filed at the proper Customs office." This conclusion was reached because "it was the Port Director, Detroit, [who] made the decision on the liquidation" at issue, and therefore the protest should have been filed within 90 days of liquidation at the Detroit port. (We note that on November 19, 2003, a supervisory Customs officer at the Detroit port informed a staff attorney from this office that it is the operational policy at Detroit to consider protests that have been timely filed at the Battle Creek location as timely filed regardless of when such protests arrive at the Detroit port from Battle Creek. The Customs officer agreed that the denial of the instant protest was an anomaly in this regard.)

According to the CBP office responsible for printing and mailing the "courtesy notices of liquidation," which advise importers of the liquidation of their entries, such a notice pertaining to an entry filed at Battle Creek will reference only the Battle Creek port's address and give no indication that the entry was liquidated at Detroit. Further, during an inquiry of the data related to the protested entry in Customs automated data collection system ("ACS"), we could find no reference to any port code other than 3805, i.e., we could find no indication that an entry entered at Battle Creek was liquidated at Detroit. Also, a representative of the Battle Creek port supplied a copy of a portion of the "bulletin notice of entries liquidated" for September 26, 1997. The Battle Creek representative stated that a hard copy of this bulletin notice is available in the public lobby of the Battle Creek port offices and is thus available for examination by importers and others. The page we received did not make reference to the specific protested entry but did include the "Region/District/Port code "33805" which we take to indicate Battle Creek's port code of 3805, though, as has been stated, no entries are actually liquidated by the Battle Creek Port Director.

ISSUE:

Whether the protest was timely when filed within 90 days of liquidation at the port of entry through which the protested entry was entered but not liquidated?

LAW AND ANALYSIS:

Bermo's protested entry was filed at Battle Creek and the protest was filed at Battle Creek. The Customs port at Battle Creek, Michigan, is designated as a "port of entry." 19 C.F.R. § 101.1(4) defines "port of entry:"

> The terms "port" and "port of entry" refer to any place designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a Customs officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws. The terms "port" and "port of entry" incorporate the geographical area under the jurisdiction of a port director. . . . .

The port at Detroit, Michigan, where the entry was liquidated is designated as a "service port."

> The term "service port" refers to a Customs location having a full range of cargo processing functions, including inspections, entry, collections, and verification.

The Headquarters file 963372 contains a memo to the file from the staff attorney who authored the protest decision. That memo states that a representative from the port of Detroit advised that, at the time Bermo's protest was decided in this office, there was no import specialist assigned to the port of Battle Creek and that "while entries may be filed at that port, the determination of classification and liquidation are done by the Port Director in Detroit."

> The relevant statute is 19 U.S.C. § 1514, which provides in pertinent part:
>
> decisions of the Customs Service, including the legality of all orders and findings entering into the same, as to . . .
> the classification and rate and amount of duties chargeable; shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, ...

(19 U.S.C. § 1514(a)(2)). Further, § 1514(c)(3) provides:

> A protest of a decision, order, or finding described in subsection (a) shall be filed with the Customs Service within ninety days after but not before notice of liquidation or reliquidation, . . .

(19 U.S.C. § 1514(c)(3)). Finally, § 1514(c)(1) states:

> A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary.

(19 U.S.C. § 1514(c)(1)).

Among the regulations implementing § 1514 is 19 C.F.R. § 174.12(e)(1), which provides, in pertinent part, that protests shall be filed within 90 days

after the date of notice of liquidation. Also, 19 C.F.R. § 174.12(d) provides that "protests shall be filed with the port director whose decision is protested." Prior to September 30, 1995, § 174.12(d) of the Customs Regulations provided:

> Protests shall be filed with the district director whose decision is protested except that, when the entry underlying the decision protested is filed at a port other than the district headquarters, the protest may be filed with the port director at that port.

On September 27, 1995, the Customs Service published T.D. 95–78 (60 Fed. Reg. 50020) which promulgated the interim rule making technical corrections to the Customs Regulations regarding Customs' re-organization including the change to § 174.12(d). The purpose of this interim rule was described in T.D. 95–78:

> This document amends the Customs Regulations to reflect Customs new organizational structure. The changes are nonsubstantive or merely procedural in nature.

(60 Fed. Reg. 50020.) The basis for these technical changes was also explained:

> Customs is now eliminating districts and regions from its field organization to place more emphasis on field operations, especially at the Customs ports of entry, and restructuring to provide better support services for those ports of entry. The current regulations contain a significant number of references (over 2,000) to organizational entities which will no longer exist or which will have a different functional context at 11:59 p.m., EST on September 30, 1995. Accordingly, regulatory references to "district directors", "regional commissioners", etc., are replaced with "port directors", "Assistant Commissioner", etc., to reflect the new field and Headquarters structure of Customs and where decisional authority will now lie.

(60 Fed. Reg. 50020.)

The statement that the changes to the regulations were nonsubstantive in nature does not indicate that the elimination from § 174.12(d) of the words, "except that, when the entry underlying the decision protested is filed at a port other than the district headquarters, the protest may be filed with the port director at that port" and the adoption of the new text in § 174.12(d) (1996), requiring that protests "shall be filed with the port director whose decision is protested," was intended to change the protest procedure and to require importers to file protests only at a service ports even if the protested entry was made at a port of entry other than the relevant service port.

As support for the conclusion that Bermo's protest was not timely filed, HRL 963372 relied on United China & Glass Co. v. United States, 53 Cust. Ct. 68 (Cust. Ct. 1964). That case applied section 514, Tariff Act of 1930, which, as described by the United China Court, then provided:

> that all decisions of a collector shall be final and conclusive on all persons 60 days after liquidation, unless prior to the expiration of the 60-day period the importer, consignee, or his agent shall have filed a protest in writing with the collector setting forth the protest claim.

In United China several protests were filed timely [then the requirement was within 60 days after liquidation] at the port of San Francisco. More than 60 days after liquidation the protests were forwarded by the San Francisco port to the New Orleans port because the entries had been filed and liquidated at New Orleans. The Customs Court held that the protests were not timely filed at New Orleans and stated:

> The filing of protests, by whim or negligence, with some one or another of the many collectors in the United States, seems to us not to have been intended by Congress in enacting sections 514 and 515.

(Id. at 70.) The Bermo protest is distinguishable from the protests in United China in that it was filed at the port where the protested entries were filed. In United China the protests were filed in San Francisco, a port which bore no relation to the port of New Orleans at which the protested entries had been entered and liquidated.

HRL 963372 also noted that the decision in Wolf D. Barth Co., Inc. v. United States, (81 Cust. Ct. 127 (Cust. Ct. 1978)) followed the holding in United China & Glass Co. v. United States. In Wolf D. Barth the court described the applicable statute:

> 19 U.S.C. 1514(b)(1)(2) requires in pertinent part that a protest be filed with the appropriate Customs officer designated in regulations prescribed by the Secretary of the Treasury within 90 days after liquidation. It is undisputed that according to section 174.12(d) of the Customs Regulations, the appropriate Customs officer for the filing of the protest in this case was the district director at Philadelphia, Pa. where the involved entry was made.

(81 Cust. Ct. 127, 128–9.) In Wolf D. Barth the protested entry was entered and liquidated at the port Philadelphia. However, plaintiff's attorneys filed a protest against the liquidation of that entry at the office of the New York regional commissioner which "returned a copy of the protest to the plaintiff showing that it was denied . . . and noting that the protest was erroneously accepted at New York." (Id. at 128.) "Subsequently, the involved protest was received by the district director at the port of Philadelphia" after the 90-day protest period had expired. (Id.) The court held that the protest was untimely because:

> [i]t is undisputed that according to section 174.12(d) of the Customs Regulations, the appropriate Customs officer for the filing of the protest in this case was the district director at Philadelphia, Pa. where the involved entry was made.

(81 Cust. Ct. 127, 129.) Like the facts in United China, the protests in Wolf D. Barth were filed at an office, the office of the New York regional commissioner, which had no conceivable connection with the port at which the protested entries were entered and liquidated. Further, the courts in both United China and Wolf D. Barth noted that the proper port at which to file the protests in issue was the port where the entry was filed.

Finally, HRL 963372 included a quote from the Court of International Trade in Po-Chien, Inc. v. United States, 3 C.I.T. 17 (Ct. Intl. Trade 1982):

> By ignorance of the legal requirements or inadvertence, plaintiff addressed its communication to the wrong office, at the wrong address.

> Quite understandably, plaintiff's letter was never received at the Los Angeles/Long Beach District, the proper [ILLEGIBLE WORDS]. Assuming, arguendo, that the letter constituted a "protest", plaintiff failed to fulfill an essential filing requirement for jurisdiction to vest in the court.

(Id. at 18.) In that case the applicable statute was 19 U.S.C. § 1514(c)(1) (1979) which provided:

> A protest of a decision under subsection (a) of this section shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, ...

The Customs Regulation applicable, 19 C.F.R. § 174.12(d), was the version described above as prior to Customs' reorganization.

In Po-Chien the plaintiff argued that a letter "mailed within ninety days of liquidation to 'U.S. Customs Service' at an address different from that of the designated official, suffices as a protest." (Id. at 18.) That letter "was never received by the appropriate customs officials." Id. We find the facts in Po-Chien distinguishable from those in HRL 963372 as well. In Po-Chien the purported protest was mailed to the wrong address and never received by the proper officials. The Bermo protest however was received timely at the port through which the goods had been entered and subsequently actually received at the port where the decision to liquidate had been made.

In Bond, Schoeneck & King v. United States, (51 T.D. 766 (Cust. Ct. 1927)) the protests at issue were received by the port of Syracuse, which then was a "subport" of Rochester, within [the then required] 60 days after liquidation. The protests were forwarded by the Syracuse port to the port of Rochester but were not received at Rochester within 60 days of liquidation of the protested entries. The court held that the protests were timely and concluded:

> to hold otherwise would be to make this liberal procedure into a catch procedure, and make the timeliness of a protest depend on the diligence with which a protest was forwarded. . . .

(Id. at 769.) The facts in Bond, Schoeneck & King v. United States are similar to those in HRL 963372 and the Customs Court's rationale is instructive in that the protest procedure is a "liberal procedure."

First, it appears there is a Customs-created connection between the ports of Battle Creek and Detroit. Unlike the two ports in United China & Glass Co. v. United States, San Francisco and New Orleans, and the two ports in Wolf D. Barth, Philadelphia and New York, in Bermo's protest the ports of Battle Creek and Detroit work together: because there are no Customs officers at Battle Creek authorized to liquidate entries, entries filed at Battle Creek must be sent on to the Detroit port for liquidation. Therefore, the facts at issue in HRL 9163372 most closely resemble those in Bond, Schoeneck & King v. United States, wherein protests timely filed at Syracuse, a subport of Rochester, were held to be timely filed—even when not forwarded to Rochester with the statutory time limit. The relationship between the ports of Battle Creek and Detroit more closely resembles the relationship between the Syracuse and Rochester ports than those ports described as completely unrelated in United China and Wolf D. Barth.

Second, in both Wolf D. Barth and Po-Chien, the courts found that under 19 C.F.R. 174.12(d) the port where the protested goods were entered was the proper port for filing the protest. In Wolf D. Barth the court held:

> It is undisputed that according to section 174.12(d) of the Customs Regulations, the appropriate Customs officer for the filing of the protest in this case was the district director at Philadelphia, Pa. where the involved entry was made.

(81 Cust. Ct. 127, 129.) The Po-Chien court stated:

> the requisite administrative protest was not filed with the district director at Los Angeles, the port of entry, . . .

(3 C.I.T. 17.) Third, the Bermo protest was not mailed to an incorrect address—an indication of carelessness and disregard for the procedure—but filed at the port where the protested entry was filed and subsequently actually received by the proper Customs officers, as was not the case in Po-Chien.

Finally, only when read closely, side-by-side and compared, do the definitions of "port of entry" and "service port" contained in the Customs regulations, give any indication that a "port of entry" like Battle Creek, is authorized to perform only limited services as compared with a "service port" like Detroit. The definition of "port of entry" states that it is "authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the Customs and navigation laws." These words may give the impression that a port of entry is authorized to conduct any or all of the processes associated with the entry of goods, including liquidation and protest of entries. Nor does the definition of a "service port" include any words indicating that the liquidation function is performed only there. And, it is only upon comparing the definition of a "service port" which is defined as offering "a full range of cargo processing functions . . ." with the definition of a "port of entry" does one get the impression that a port of entry offers something less than "a full range of cargo processing functions."

It is also pertinent that we were unable to find any evidence of notice to the importing public that entries of merchandise entered at Battle Creek are liquidated at the discretion of the Detroit Port Director. Neither the courtesy notice of liquidation, the ACS records, nor the printed bulletin notice advised importers that entries filed at Battle Creek were not liquidated there. Consequently, there is no evidence to show that an importer making entry through the port of entry at Battle Creek, would know or could be expected to know that the decision on liquidation of the entry would be that of the Port Director at Detroit rather than the Battle Creek Port Director.

As indicated above, this ruling has no effect on the entry which was the subject of protest number 3801–97–105194 because the liquidation of that entry is final on both the protestant and Customs and Border Protection (see 19 C.F.R. § 177.12(e)(2)). Consequently, Customs no longer has jurisdiction over that entry. See San Francisco Newspaper Printing Co. v. United States, 620 F. Supp. 738 (Ct. Int'l Trade 1985).

HOLDING:

Based on the above analysis, the protest was timely filed when it was filed at the port through which the protested entry was entered, though not liqui-

dated, within 90 days of liquidation. Therefore HRL 963372 is hereby revoked.

William G. Rosoff for MYLES HARMON,
Director,
Commercial Rulings Division.

19 CFR Part 177

PROPOSED MODIFICATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF INK JET PRINTER CARTRIDGES

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed modification of a ruling letter relating to the tariff classification of ink jet printer cartridges under the Harmonized Tariff Schedule of the United States ("HTSUS").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling concerning the tariff classification of ink jet printer cartridges. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before March 26, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 572–8776.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as

amended, and related laws. Two new concepts that emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify Headquarters Ruling Letter ("HQ") 963301, dated June 14, 2001. In HQ 963301, merchandise described as Hewlett Packard 51649A printer cartridges to be used in ink jet printers were classified under subheading 8473.30.30, HTSUS, which provides for parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to chapter 84. In reaching this conclusion, we erroneously incorporated language concerning laser jet printers and laser jet cartridges, articles that are distinct in design and function from ink jet printers and cartridges. While the classification decision made in HQ 963301 is correct, it is necessary to remove the language concerning laser jet printers and cartridges. HQ 963301 is set forth as "Attachment A" to this document.

Although in this notice Customs is specifically referring to one ruling, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced ruling (see above), should advise Customs during this notice period.

An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. § 1625(c)(1), Customs intends to modify HQ 963301, and any other ruling not specifically identified, to reflect the proper rationale for classification of the merchandise pursuant to the analysis set forth in Proposed HQ 966222 (see "Attachment B" to this document).

Before taking this action, consideration will be given to any written comments timely received.

Dated: February 9, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 963301
June 14, 2001
CLA–2 RR:CR:GC 963301 AML
CATEGORY: Classification
TARIFF NO.: 8473.30.30

PORT DIRECTOR
U.S. CUSTOMS SERVICE
35 West Service Road
Champlain, NY 12919

RE: Protest 0712–99–100120; Hewlett Packard 51649A printer cartridge

DEAR PORT DIRECTOR:

The following is our decision regarding protest 0712–99–100120, concerning your classification of printer cartridges under subheading 3707.90.32, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other chemical preparations for photographic uses. FACTS:

The articles are Hewlett Packard 51649A printer cartridges to be used in ink jet printers in conjunction with automatic data processing machines. A broker for the importer entered the articles under subheading 9801.00.1043, HTSUS, which provides for products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, articles provided for in headings 8469, 8470, 8471, 8472 or 8473. When the broker did not timely respond to either the CF 28 or CF 29 requesting a drawback affidavit and proposing a rate advance, respectively, Customs classified the articles under heading 3707, HTSUS, as other chemical preparations for photographic uses. The importer subsequently filed a corrected entry summary (CF 7501) which indicated classification under subheading 8473.30.30, HTSUS, which provides for parts and accessories (other than covers, carrying cases and the like) suitable for use solely or

principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to chapter 73.

The articles were entered on September 30, 1998, and the entry was liquidated on March 12, 1999. The protest was filed on June 10, 1999.

ISSUE:

Whether the printer cartridges are classifiable under subheading 3707.90.3290, HTSUS as other chemical preparations for photographic uses; or under subheading 8473.30.30, HTSUS, as parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to Chapter 84?

LAW AND ANALYSIS:

Initially we note that the protest was timely filed (i.e., within 90 days after but not before the notice of liquidation; see 19 U.S.C. 1514 (c)(3)(A)) and the matters protested are protestable (see 1514 U.S.C. 1514 (a)(2) and (5)).

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRIs), taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the heading and legal notes do not otherwise require, the remaining GRIs are applied, taken in order.

The HTSUS provisions under consideration are as follows:

3707	Chemical preparations for photographic uses (other than varnishes, glues, adhesives and similar preparations); unmixed products for photographic uses, put up in measured portions or put up for retail sale in a form ready for use:
3707.90	Other:
	Chemical preparations for photographic uses:
3707.90.32	Other.
* * *	
8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472:
	Parts:
8473.30	Parts and accessories of the machines of heading 8471:
8473.30.30	Other parts for printers, specified in additional U.S. note 2 to this chapter.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989). General Note 2 to Chapter 37 provides that "the word 'photographic' relates to the process by which visible images are formed, directly

or indirectly, by the action of light or other forms of radiation on photosensitive surfaces." Grolier's Encyclopedia (Grolier Electronic Publishing, 1994)(hereinafter "Grolier's"), under the heading "photography" elaborates:

The fundamental physical principle of photography is that light falling briefly on the grains of certain insoluble silver salts (silver chloride, bromide, or iodide) produces small, invisible changes in the grains. When placed in certain chemical solutions known as developers, the affected grains are converted into a black form of silver.

The ink jet printer cartridges do not form visible images "by the action of light or other forms of radiation on photosensitive surfaces," nor is there any evidence that the ink jet cartridges contain "grains of certain insoluble silver salts." Under the heading "printer, computer," Grolier's provides that "a printer is a computer output device that records information on paper." An ink jet printer "fire[s] small bursts of ink at the paper." As such, the ink jet cartridge is not classifiable as a chemical preparation for photographic use.

The laser printer, an electronic machine used in conjunction with an automatic data processing machine (the ink jet cartridges of which are subject of the protest) is clearly classifiable in Chapter 84, which provides for, inter alia, machinery and mechanical appliances; parts thereof. The ink jet cartridge is an integral part of the printer. "Where a particular part of an article is provided for specifically, a part of that particular part is more specifically provided for as part of the part than as part of the whole." Sturm, Ruth; Customs Law & Administration, 3rd Edition, section 54.9, p. 57 (citing C.F. Liebert v. United States, 60 Cust. Ct. 677, C.D. 3499, 287 F. Supp. 1008 (1968); Foster Wheeler Corp. v. United States, 61 Cust. Ct. 166, C.D. 3556, 290 F. Supp. 375 (1968); and Korody-Colyer Corp. v. United States, 66 Cust. Ct. 337, C.D. 4212 (1971)). Section XVI (in which Chapter 84 is found), note 2, HTSUS, states that:

[s]ubject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

> (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings;
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
>
> (c) All other parts are to be classified in heading 8485 or 8548.

Subject to certain exceptions not relevant here, goods that are identifiable parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. Nidec Corporation v. United States, 861 F. Supp. 136, aff'd, 68 F. 3d 1333 (1995). Parts, which are goods included in any of the headings of Chapters 84 and 85, are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b).

Additional U.S. Note 2 to Chapter 84 provides, in pertinent part, that:

> Subheadings 8473.30.30 and 8473.30.60 cover the following parts of printers of subheading 8471.60:
>
> * * *
>
> (c) Laser imaging assemblies, incorporating more than one of the following: photoreceptor belt or cylinder, toner receptacle unit, toner developing unit, charge/discharge units, cleaning unit[.] Laser printers for use with automatic data processing machines are classifiable under heading 8471, HTSUS. See, e.g., HQ 957028, dated November 16, 1994; HQ 951222, dated March 14, 1994; HQ 955018, dated January 25, 1994; and HQ 955263, dated January 19, 1994. The ink jet cartridges, which constitute an integral part of the printers, in accordance with the above-referenced section and chapter notes, are classifiable as parts of the printers under heading 8473, HTSUS.

HOLDING:

The Hewlitt Packard 51649A printer cartridges are classifiable under subheading 8473.30.30, HTSUS, as parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to Chapter 84.

The protest should be GRANTED. In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than sixty (60) days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty (60) days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966222
CLA–2 RR:CR:GC 966222 AML
CATEGORY: Classification
TARIFF NO.: 8473.30.30

MR. CARL SOLLER
SOLLER, SHAYNE & HORN
46 Trinity Place
New York, NY 10006

RE: Modification of HQ 963301; Hewlett Packard 51649A printer cartridge

DEAR MR. SOLLER:

This is in reference to Headquarters Ruling Letter ("HQ") 963301, dated June 14, 2001, which decided protest 0712–99–100120, filed by you on behalf of Access Data, Inc., concerning the classification of printer cartridges under subheading 3707.90.32, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for other chemical preparations for photographic uses. We have reconsidered HQ 963301 and have concluded that certain language needs to be modified. This ruling serves that purpose. It has no effect on the classification determination made in HQ 963301 (see below).

FACTS:

We described the articles in HQ 963301 as follows:

> The articles are Hewlett Packard 51649A printer cartridges to be used in ink jet printers in conjunction with automatic data processing machines. A broker for the importer entered the articles under subheading 9801.00.1043, HTSUS, which provides for products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, articles provided for in headings 8469, 8470, 8471, 8472 or 8473. When the broker did not timely respond to either the CF 28 or CF 29 requesting a drawback affidavit and proposing a rate advance, respectively, Customs classified the articles under heading 3707, HTSUS, as other chemical preparations for photographic uses. The importer subsequently filed a corrected entry summary (CF 7501) which indicated classification under subheading 8473.30.30, HTSUS, which provides for parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to chapter 84.

ISSUE:

Whether the printer cartridges are classifiable under subheading 3707.90.3290, HTSUS, which provides for other chemical preparations for photographic uses; or under subheading 8473.30.30, HTSUS, as parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in Additional U.S. Note 2 to Chapter 84?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

3707	Chemical preparations for photographic uses (other than varnishes, glues, adhesives and similar preparations); unmixed products for photographic uses, put up in measured portions or put up for retail sale in a form ready for use:
3707.90	Other:
	Chemical preparations for photographic uses:
3707.90.32	Other.
	* * *
8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472:
	Parts:
8473.30	Parts and accessories of the machines of heading 8471:
8473.30.30	Other parts for printers, specified in additional U.S. note 2 to this chapter.

When interpreting and implementing the HTSUS, the Explanatory Notes ("ENs") of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 2 to Chapter 37 provides that "the word 'photographic' relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces." Grolier's Encyclopedia (Grolier Electronic Publishing, 1994)(hereinafter "Grolier's"), under the heading "photography" elaborates:

> The fundamental physical principle of photography is that light falling briefly on the grains of certain insoluble silver salts (silver chloride, bromide, or iodide) produces small, invisible changes in the grains. When placed in certain chemical solutions known as developers, the affected grains are converted into a black form of silver.

The ink jet printer cartridges do not form visible images "by the action of light or other forms of radiation on photosensitive surfaces," nor is there any

evidence that the ink jet cartridges contain "grains of certain insoluble silver salts." Under the heading "printer, computer," Grolier's provides that "a printer is a computer output device that records information on paper." An ink jet printer "fire[s] small bursts of ink at the paper." As such, the ink jet cartridge is not classifiable as a chemical preparation for photographic use.

The ink jet printer, an electronic machine used in conjunction with an automatic data processing machine (the ink jet cartridges of which are subject of the protest) is clearly classifiable in Chapter 84, which provides for, *inter alia*, machinery and mechanical appliances; parts thereof. The ink jet cartridge is an integral part of the printer.

Section XVI (in which Chapter 84 is found), note 2, HTSUS, states that:

> [s]ubject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings;
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
>
> (c) All other parts are to be classified in heading 8485 or 8548.

Subject to certain exceptions not relevant here, goods that are identifiable parts of machines or apparatus of Chapter 84 or Chapter 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. *Nidec Corporation v. United States*, 861 F. Supp. 136, *aff'd*, 68 F. 3d 1333 (1995). Parts, which are goods included in any of the headings of Chapters 84 and 85, are in all cases to be classified in their respective headings. See Note 2(a). Other parts, if suitable for use solely or principally with a particular machine, or with a number of machines of the same heading, are to be classified with the machines of that kind. See Note 2(b).

Ink jet printers for use with automatic data processing machines are classifiable under heading 8471, HTSUS. See, e.g., HQ 964347, dated March 15, 2001; HQ 962479, dated March 12, 2001; NY C86223, dated April 13, 1998; and NY C80900, dated October 21, 1997.

Thus, in accordance with the above-referenced section and chapter notes, the ink jet cartridges, which constitute an integral part of the printers, are classifiable as parts of the printers under subheading 8473.30.30, HTSUS.

As indicated above, this ruling has no effect on the entries which were the subject of Protest 0712–99–100120, as Customs no longer has jurisdiction over those entries. See *San Francisco Newspaper Printing Co. v. United States*, 620 F. Supp. 738 (CIT 1985).

HOLDING:

The Hewlett Packard 51649A printer cartridges are classifiable under subheading 8473.30.30, HTSUS, as parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472: other parts for printers, specified in additional U.S. note 2 to Chapter 84.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

United States Court of International Trade

One Federal Plaza
New York, NY 10278

Chief Judge

Jane A. Restani

Judges

Gregory W. Carman
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton
Timothy C. Stanceu

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

Slip Op. 04–12

BERGERON'S SEAFOOD, PLAINTIFF, v. UNITED STATES INTERNATIONAL TRADE COMMISSION AND UNITED STATES BUREAU OF CUSTOMS AND BORDER PROTECTION, DEFENDANTS.

Before: WALLACH, Judge
Court No.: 03–00448

[Plaintiff's motion for an evidentiary hearing is denied.]

Decided: February 5, 2004

Peter D. Keisler, Assistant Attorney General; *David M. Cohen*, Director; *Jeanne E. Davidson*, Deputy Director; *Paul D. Kovac*, Trial Attorney, United States Department of Justice, Civil Division, Commercial Litigation Branch; *Ellen C. Daly*, Senior Attorney, Office of Chief Counsel, for Defendant United States Bureau of Customs and Border Protection; *Lyn M. Schlitt*, General Counsel; *James M. Lyons*, Deputy General Counsel; *Michael Diehl*, Office of the General Counsel, for Defendant United States International Trade Commission; *William Brown*, for Plaintiff.

ORDER

WALLACH, Judge.

I
Preliminary Statement

This case is before the court on Plaintiff's Motion for Evidentiary Hearing and/or Inclusion of Affidavits in Agency Record ("Plaintiff's Motion"). Plaintiff challenges the United States International Trade Commission's ("ITC") decision not to include Plaintiff on the list of "affected domestic producers" eligible to receive distributions of antidumping duties collected on crawfish tail meat imported from the People's Republic of China pursuant to the Continued Dumping and Subsidy Act of 2000, 19 U.S.C. § 1675c (1999)("CDSOA" or "Byrd Amendment"). Plaintiff now moves for either an evidentiary hearing to present evidence that it mailed a questionnaire response to the ITC in satisfaction of the CDSOA, or, alternatively, the inclusion of

two affidavits in the agency record. Defendants[1] argue that the case must be decided solely upon the agency record and that Plaintiff has failed to present any legal basis for supplementing the agency record. The Court has jurisdiction pursuant to 28 U.S.C. § 1581(i) (1994).[2] For the foregoing reasons, Plaintiff's Motion is denied.

II
Background

A
The Byrd Amendment

The CDSOA modified the Tariff Act of 1930 and provided that duties collected under antidumping or countervailing duty orders be held in accounts for distribution to "affected domestic producers" to offset "qualifying expenditures." Pub. L. No. 106–387, 114 Stat. 1549, 1549A72–1549A73. The ITC administers the Byrd Amendment jointly with the Bureau of Customs and Border Protection ("Customs"). *See* 19 U.S.C. § 1675c.

The Byrd Amendment is intended to strengthen the remedial purpose of the antidumping and countervailing duty laws. CDSOA, Pub. L. No. 106–387, 114 Stat. 1549, 1549A72–1549A73; *Candle Corp. of America and Blyth Inc. v. USITC*, 27 CIT ____, 259 F. Supp. 2d 1349, 1351 (2003). Under the CDSOA, only "affected domestic producers" are eligible for offsets. 19 U.S.C. § 1675c(a). In order to qualify as an affected domestic producer, a person must demonstrate, *inter alia*,

---

[1] Although the United States Bureau of Customs and Border Protection ("Customs") is also named as a Defendant in this action, all references to the Defendant refer to the ITC unless otherwise noted. As Customs points out in its opposition, Plaintiff's Motion is directed at the ITC as it is the ITC's responsibility to compile the list of domestic producers. *See* Defendant's, The United States Bureau of Customs and Border Protection, Opposition to Bergeron's Seafood's Motion for Evidentiary Hearing and/or Inclusion of Affidavits in Agency Record ("Customs Opposition") at 1.

[2] At oral argument on February 3, 2004, all parties agreed that the court has jurisdiction pursuant to 28 U.S.C. § 1581(i).

The Court of International Trade has exclusive jurisdiction over "any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)–(3) of this subsection and subsections (a)–(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable . . . by the Court of International Trade under section 516A(a) of the Tariff Act of 1930. . . .

28 U.S.C. § 1581(i).

that it "was a petitioner or interested party in support of the petition with respect to which an antidumping duty order . . . has been entered. . . ." 19 U.S.C. § 1675c(b)(1)(A).

The ITC's prepares a list of "petitioners" and "persons that indicate support of the petition. . . ." 19 U.S.C. § 1675c(d)(1). To be included on the ITC's list, the interested party must indicate support for the petition "by letter or through questionnaire response" that appears on the Commission's administrative record. 19 U.S.C. § 1675c(d)(1); *Candle Corp.*, 259 F. Supp. 2d at 1351.

B
Procedural History

On September 15, 1997, the ITC entered an antidumping duty order on crawfish tail meat from China. *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 Fed. Reg. 48,218, 48,219 (Sept. 15, 1997). On December 29, 2000[3], the ITC provided Customs with a "list of petitioners and other entities that indicated public support of the petition during each . . . antidumping and countervailing duty investigation." Letter from Stephen Koplan, Chairman, ITC, to The Honorable Raymond Kelly, Commissioner of Customs, United States Customs Service (Dec. 29, 2000). The list of petitioners in support of the petition on crawfish tail meat from China did not include the Plaintiff, Bergeron's Seafood. *Id.* On July 3, 2002, Customs issued a notice of intent to distribute offset for fiscal year 2002 for distribution of antidumping duties collected in fiscal year 2002, including antidumping duties collected on crawfish tail meat from China. *Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers*, 67 Fed Reg. 44,722 (July 3, 2002).

On August 16, 2002, Jeffery S. Bergeron submitted a letter to the ITC requesting that it revise the list to include the Plaintiff. The basis of this request was a claim that "[Plaintiff] expressed support for the petition in the Commission's original investigation. . . ." Letter from Jeffery S. Bergeron, Owner of Bergeron's Seafood, Inc., to the Honorable Marilyn Abbott, Secretary of the ITC (Aug. 16, 2002). The letter said that "[Plaintiff] did not retain a copy of its questionnaire response in the original investigation and in discussion with Mr. Lynn Featherstone, a copy resides with his office." *Id.*

---

[3] Although Plaintiff states that the date of this notification was March 15, 2001 in Plaintiff's Motion at 2, both the original Complaint at 6, para. 13 and Opposition of Defendant United States International Trade Commission to Motion for Evidentiary Hearing and/or Inclusion of Affidavits in Agency Record ("Defendant ITC's Opposition") at 3, indicate the correct date as December 29, 2000. The document appears on List 1, Document number 3 of the documents provided to the court by Defendant ITC pursuant to CIT Rule 72(a).

On August 27, 2002, the Commission denied the request. It explained that "there is no indication in the Commission's record of the original investigation that the company expressed support. Specifically, there is no indication that [Plaintiff] filed a letter or questionnaire indicating support of the petition in the original investigation." Letter from Deanna Tanner Okun Chairman of the ITC, to Jeffery S. Bergeron, Owner, Bergeron's Seafood, Inc. (Aug. 27, 2002).

On September 13, 2002, Mr. Bergeron again requested that his company be added to the list. This second letter was substantially the same as the August 16, 2002 letter with the exception of the inclusion of a copy of what Mr. Bergeron purported to be Plaintiff's questionnaire response. The letter states: "[p]lease find attached with this request a copy of our Processors' Questionnaire Crawfish Tail Meat from China, which we file in a timely manner by May 5th 1997." Letter to the Honorable Marilyn Abbott, Secretary of the ITC, from Jeffery S. Bergeron, Owner, Bergeron's Seafood, Inc. (Sept. 13, 2002).

On October 2, 2002, the Commission rejected Bergeron's second request, stating that: "we completed another review of the official record of the original investigation on crawfish tail meat from China. We can find no copy of a questionnaire response from [Plaintiff] in our record nor any indication that [Plaintiff] ever filed a questionnaire with the Commission." Letter to Jeffery S. Bergeron, Owner, Bergeron's Seafood, Inc., from Deanna Tanner Okun, Chairman of the ITC (Oct. 2, 2002).

On January 27, 2003, Plaintiff's counsel sent a request for reconsideration to the ITC. This request included affidavits by Jeffery Bergeron and an independent tax accountant, Mary Gail Petro. Mr. Bergeron indicated that, with the assistance of Ms. Petro, he completed the questionnaire indicating support for the petition, signed it, and gave it to Ms. Petro to be mailed on April 17, 1997. Ms. Petro indicated that she helped Mr. Bergeron complete the questionnaire, that it indicated support for the petition, and that she mailed it sometime around April 17, 1997. Letter to the Honorable Marilyn Abbott, Secretary of the ITC, from William E. Brown, attorney for Bergeron's Seafood, Inc. (Jan. 27, 2003).

On May 1, 2003, the ITC denied Plaintiff's request of January 29, 2003, stating:

> After examining the partial questionnaire you attached to your request, and the affidavits that it was mailed in a timely manner, we completed another review of the official record of the original investigation of crawfish tail meat from China. We can find no copy of a questionnaire response from [Plaintiff] in our record nor any indication that [Plaintiff] filed a questionnaire response with the Commission."

Letter to William E. Brown, attorney for Bergeron's Seafood, Inc., from Deanna Tanner Okun, Chairman of the ITC (May 1, 2003). The ITC's letter goes on to explain that because the underlying investigation was a record proceeding, the ITC must rely solely on the record established in the investigation. *Id.*

III
Applicable Legal Standard

This court has discretion to grant an evidentiary hearing as provided for in Rule 43 of the CIT rules which states that "When a motion is based on facts not appearing in the record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition." USCIT R. 43(c); *see also Ammex, Inc. v. United States*, 23 CIT 549, 555, 62 F. Supp. 2d 1148, 1156 (1998), discussed *infra* at 9.

IV
Arguments

Plaintiff moves for an evidentiary hearing to present evidence that it mailed a questionnaire response in support of the petition for an antidumping duty order on crawfish tail meat imported from China in satisfaction of Section (d)(1) of the CDSOA, or, alternatively, for the inclusion of two affidavits submitted to the ITC in the agency record. Plaintiff's Motion at 1. Defendant[4] claims that Plaintiff's motion amounts to an attempt to insert non-record evidence into the proceedings and is therefore contrary to law. Defendant ITC's Opposition at 1.

V
Discussion

Plaintiff's arguments for an evidentiary hearing are based primarily on equitable grounds. Plaintiff states that "[t]he plaintiff's owners are citizens who feel wronged by the government and seek their day in court—an opportunity to tell their story." Plaintiff's Motion at 2.

Plaintiff claims to have found no authority precluding the granting of its motion. Plaintiff states that it has "not found or been cited a definitive case that prohibits the taking of evidence in an action to

---

[4] Defendant Customs supports the ITC's position that this court's consideration should be limited to the administrative record, and that the exceptions enumerated in *Ammex* do not apply. *See* Customs Opposition at 3.

determine eligibility under CDSOA." and that "[t]here does not appear to be a statute, case, or rule prohibiting the taking of testimony and other evidence in an action for declaratory judgment or in an action for judgment upon the agency record where the agency has not resolved the factual issue." Plaintiff's Motion at 1, 9.

The legal basis for Plaintiff's motion lies in what Plaintiff claims is the court's discretion to hold an evidentiary hearing under USCIT R. 57 (Declaratory Judgment), USCIT R. 43(a), (c) (authorizing the taking of testimony at trials of declaratory judgment and on motions), and USCIT R. 56.1 (Judgment Upon an Agency Record for an Action Other Than That Described in 28 U.S.C. § 1581(c)).[5] Plaintiff's Motion at 1.

Defendant argues that Plaintiff's motion should be denied primarily because the court is required to decide the case based solely upon the agency record.[6] Defendant claims that this case must be decided solely upon the administrative record as required by 28 U.S.C. 1581(i) and that the ITC is likewise limited by the CDSOA. Defendant says that:

> Actions heard pursuant to section 1581(i) jurisdiction are reviewed based on the record. 28 U.S.C. § 2640(e) (Court of International Trade to review as provided in 5 U.S.C. § 706); *Candle Corp. of America*, 259 F. Supp. 2d at 1353 (actions heard under 28 U.S.C. § 1581(i), including Byrd Amendment litigation, to be decided under 5 U.S.C. § 706); 5 U.S.C. § 706 (matters to be reviewed based on the "whole record"); *Ammex, Inc. v. United States*, 23 CIT 549, 555, 62 F. Supp. 2d 1148, 1156

---

[5] In a post-oral argument memorandum, Plaintiff does cite to *Fomby-Denson v. Dept. of the Army*, 247 F.3d 1366 (Fed. Cir 2001) for the proposition that the court may consider evidence submitted after an agency proceeding is concluded. In *Fomby-Denson*, the Merit Systems Protection Board denied the plaintiff's request for enforcement of a settlement agreement related to her termination from the Army. The Federal Circuit upheld the Board's decision and found that the agreement would contravene public policy. The Federal Circuit stated that "we may therefore decide this appeal on a ground not considered by the Board" *Fomby-Denson*, 247 F.3d at 5. However, here the court is limited to the administrative record. *Fomby-Denson* is a contract case and is distinguishable from the international trade cases discussed herein, which do require the court's consideration to be limited to the administrative record. *See, e.g.*, *Ammex*, 23 CIT at 549, 571 (explaining that where the court reviews a decision by Customs, "the Court's review is limited to the record that was before the administrative decisionmakers").

[6] Defendant also addresses the factual bases of Plaintiff's argument, pointing out that Plaintiff's questionnaire response, which was once supposedly missing was later produced without explanation. Although Plaintiff says that it submitted one questionnaire response, ordinarily during the course of an investigation the ITC asks domestic producers to complete questionnaire responses in both the preliminary and final phases, neither of which were found upon investigation. Defendant ITC's Opposition at 4, 13 n. 16.

(1998) ("whole record" interpreted to mean all the documents before the agency at the time the decision was made).

Defendant ITC's Opposition at 6.[7]

Defendant adds that under the CDSOA the ITC is required to compile its list of petitioners and persons in support of the petition based on letters or questionnaire responses on its administrative record. *Id.*; *see* 19 U.S.C. § 1675c(d)(1). Defendant further states that, but for one exception not applicable here,[8] under the statute there is no other way to be included on the ITC list.

Defendant claims Plaintiff's argument ignores the court's holding in *Ammex*, 23 CIT at 549, wherein the court enumerated several limited circumstances under which the administrative record could be amended, none of which are alleged by Plaintiff. Defendant ITC's Opposition at 7. Defendant ITC also argues that Plaintiff's motion should be denied based on the finality and administrative efficiency inherent in the Byrd Amendment. Defendant ITC's Opposition at 12.

In *Ammex*, this court enumerated several acceptable justifications for supplementing the administrative record:

> 1—The agency relied on documents not in the record;
>
> 2—The agency failed to adequately explain its action;
>
> 3—The agency acted in bad faith or exhibited improper behavior; and
>
> 4—The agency was required to provide clarification of certain technical terms.

Ammex, 23 CIT at 555–557. These exceptions are not alleged in this case. Plaintiff does not claim that the agency relied upon documents not in the record; there is no claim that the agency's action was not adequately explained; there has been no allegation that the agency

---

[7] Jurisdiction under 28 U.S.C. 1581(i) is not limited to actions reviewable solely on the agency record, *see, e.g.*, *J.S. Stone, Inc. v. United States*, 2003 Ct. Intl. Trade LEXIS 149 (CIT 2003); *Consol. Bearings Co. v. United States*, 348 F.3d 997 (Fed. Cir. 2003).

[8] The defendant spells out this exception in its Opposition:

> The sole exception is for "those cases in which . . . . *the Commission's records do not permit an identification of those in support of a petition*. . . ." 19 U.S.C. § 1675c(d)(1) (emphasis added). In such an instance, "the Commission shall consult with the administering authority to determine the identity of the petitioner and those domestic parties who have entered appearances during administrative reviews conducted by the administering authority under section 1675 of this title." 19 U.S.C. § 1675c(d)(1). Thus, if the Commission's records do not permit the identification of those in support, then the Commission is to consult with the administering authority, which in turn will consult its records to determine which parties have entered appearances in administrative reviews.

Defendant ITC's Opposition at 3.

acted in bad faith or exhibited improper behavior; and there are no technical terms in need or clarification. Therefore, the court denies Plaintiff's request to supplement the agency record.

V
Conclusion

For the foregoing reasons, Plaintiff's Motion For Evidentiary Hearing And/Or Inclusion Of Affidavits In Agency Record is denied.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO. / DATE JUDGE	*PLAINTIFF*	*COURT NO.*	*ASSESSED*	*HELD*	*BASIS*	*PORT OF ENTRY & MERCHANDISE*
C04/1 1/6/04 Carman, J.	Gallagher Power Fence, Inc.	00–04–00148	8543.40.00 Various rates	9817.00.60 Free of duty	Agreed statement of facts	Not stated Various components of an electrical fence system
C04/2 1/12/04 Barzilay, J.	Toy Biz, Inc.	97–05–00744	9502.10.40 12%	9503.49.00 6.8% 7117.90.50 11%	Agreed statement of facts	Seattle Action figures & pins
C04/3 1/27/04 Barzilay, J.	Toy Biz, Inc.	96–05–01448	9502.10.40 12%	9503.49.00 6.8%	Agreed statement of facts	Seattle Action figures
C04/4 1/27/04 Barzilay, J.	Toy Biz, Inc.	96–05–01449	9502.10.40 12%	9503.49.00 6.8%	Agreed statement of facts	Seattle Action figures
C04/5 1/30/04 Eaton, J.	Automatic Plastic Molding, Inc.	99–10–00666	7013.39.20 27.8% 7013.99.50 30%	7010.91.50 Free of duty	Agreed statement of facts	Not stated Glass Jar
C04/6 1/30/04 Wallach, J.	Automatic Plastic Molding, Inc.	02–00419	7013.39.20 27.8%	7010.91.50 Free of duty	Agreed statement of facts	Not stated Glass Jar

ABSTRACTED VALUATION DECISIONS

DECISION NO./DATE JUDGE	*PLAINTIFF*	*COURT NO.*	*VALUATION*	*HELD*	*BASIS*	*PORT OF ENTRY & MERCHANDISE*
V04/1 1/13/04 Pogue, J.	La Perla Fashions, Inc.	02–00399	Transaction value	At invoice price actually paid by LPF to the exporter, Gruppo La Perla, S.p.A.	Agreed statement of facts	New York Various articles of apparel

Index

Customs Bulletin and Decisions
Vol. 38, No. 9, February 25, 2004

Bureau of Customs and Border Protection

CBP Decisions

General Notices

CUSTOMS RULINGS LETTERS AND TREATMENT

U.S. Court of International Trade

Slip Opinions

Abstracted Decisions

*U.S. G.P.O.: 2004-496-409:80036